QUESTIONS PRESENTED

1. Whether the well-established inherent power of a federal court to award attorneys' fees against a party who abuses the court's processes has been eliminated by the 1980 amendment to 28 U.S.C. § 1927 or the 1983 amendment to Rule 11 of the Federal Rules of Civil Procedure.

2. Whether an inherent power affecting the ability of federal courts to protect their own operations and integrity applies in diversity cases when the relevant state courts do not possess the same power.

3. Whether the district court abused its discretion in awarding respondent full attorneys' fees in this case.

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Other Authorities

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-256

G. RUSSELL CHAMBERS,
Petitioner,

v.

NASCO, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR RESPONDENT

STATEMENT

This case grew out of a simple contract pursuant to which petitioner G. Russell Chambers and his company, Calcasieu Television and Radio, Inc. (CTR), agreed to sell a television station to respondent NASCO, Inc. When the sellers breached the contract, NASCO sued for specific performance. Although there was no colorable ground for resisting NASCO's claim, Chambers nevertheless pursued a vigorous campaign of fraudulent, dilatory, and abusive conduct designed to deprive NASCO of the effective relief to which it was indisputably en-

titled. The campaign began the day Chambers received notice of the lawsuit and continued for almost three years until NASCO finally obtained relief. The district court awarded attorneys' fees of $996,644.65 against Chambers, and the court of appeals affirmed the award.[1]

1. *The Merits of the Contract Lawsuit.* On August 9, 1983, NASCO entered into a contract to purchase from CTR and its sole shareholder and director, Chambers, a television station, KPLC-TV, and all of the assets used in its operation. Pet. App. A4. The "Purchase Agreement" required NASCO and CTR to use their best efforts to obtain the requisite permission from the Federal Communications Commission (FCC) for the transfer of KPLC-TV's broadcasting license. *Id.* at A5. To this end, the Agreement provided that NASCO and CTR would file a joint application with the FCC by September 23, 1983. *Ibid.* Sometime after August 22, 1983, however, Chambers decided not to go forward with the deal and asked NASCO to abandon the sale. *Id.* at A5-A6. NASCO refused. *Id.* at A6. On September 23, CTR breached the contract by failing to file its portion of the FCC application.

On October 17, 1983, NASCO filed suit for specific performance in the Western District of Louisiana, invoking the federal court's diversity jurisdiction. After lengthy pre-trial proceedings—described more fully below—a bench trial was held on April 17, 1985. I J.A. 7. As the district court later found, the defendants introduced not "one single item of evidence against the validity of the Purchase Agreement." Pet. App. A55. Indeed, on the eve of trial, Chambers and CTR stipulated that the Purchase Agreement was valid and enforceable, and that CTR had breached it. *Id.* at A16-A17. The defendants argued, instead, that the Agreement to sell the television station to NASCO should not be enforced. This

[1] The listing required by Rule 29.1 of this Court is set out in Respondent's Brief In Opposition at vi-vii.

position was based on the fact that the day before this case was filed—but *after* receiving mandatory notice of a motion for a temporary restraining order by NASCO—defendants had simulated a sale of certain key television properties to a related party (a newly created trust, with Chambers' sister, Mabel Baker, as trustee); that "sale," the defendants claimed, had priority under Louisiana law because it was recorded before the Purchase Agreement.

On November 8, 1985, the district court ruled in favor of NASCO. I J.A. 6. The court rejected the defense to the now-concededly valid Agreement, concluding that Chambers never had any intention of conveying ownership of the station properties to the new Trust and thus, under Louisiana law, the "sale" was a sham transaction and without legal effect. *Id.* at 31-34. The court thereupon ordered CTR and Chambers to perform the Purchase Agreement, finding such performance entirely practicable. *Id.* at 34-35.

On August 6, 1986, the United States Court of Appeals for the Fifth Circuit affirmed, ruling from the bench at the close of oral argument. I J.A. 46. The court of appeals rejected the arguments of Chambers and CTR, describing them as "disingenuous," and held that the appeal was "manipulative," "completely frivolous," and therefore deserving of sanctions under Federal Rule of Appellate Procedure 38. *Ibid.* The court remanded the case to the district judge for a determination of the costs and attorneys' fees incurred by NASCO in the appeal. *Ibid.* The court of appeals also instructed the district court to determine whether sanctions under Federal Rule of Civil Procedure 11 and 28 U.S.C. § 1927 should be imposed against CTR, Chambers, and/or their lawyers for the conduct described below. *Id.* at 46-47.

The sale of the television station was closed on August 27, 1986, after almost three years of litigation.

2. *Petitioner's Abuse of the Court's Processes.* Petitioner's abuse of the judicial process—which the district

court said was "as classic an example of vicious, deliberate, deceitful, fraudulent and sanctionable conduct as the Courts can produce," the "modern counterpart" of "trial by ordeal" (Pet. App. A50)—began the moment he learned that NASCO's lawsuit was about to be filed. On Friday, October 14, 1983, NASCO notified Jonathan Golden, an officer of CTR and an attorney for CTR and Chambers, that on the following Monday it would file suit for specific performance and seek a temporary restraining order (TRO) prohibiting the transfer or encumbrance of any of the properties subject to the Agreement. *Id.* at A2, A9. This notice, the purpose of which was to enable CTR and Chambers to be present and defend their interests at the hearing, was required under Federal Rule of Civil Procedure 65(b) and Rule 11 of the local rules of the district court. *Id.* at A9.

With knowledge of NASCO's impending suit, Chambers and A.J. Gray, an attorney for CTR and Chambers, on Sunday, October 16, embarked on "a fraudulent scheme . . . designed to place the operating properties of CTR beyond the reach and jurisdiction of th[e] Court." *Ibid.* The scheme was to create a new entity subject to Chambers' control, the Facility Trust, and "sell" the television station's real properties to the Trust. The Trust would then lease the assets back to CTR so that Chambers could continue operating the station. *Id.* at A2, A10. Because the Purchase Agreement with NASCO had not been recorded, Chambers and his lawyer Gray planned to argue that the subsequent "sale" to the Trust would have priority, under Louisiana's Public Records Doctrine, because it would be recorded first. *Id.* at A8-A9; I J.A. 33-34.

Chambers and Gray created the Trust on October 16, supposedly with a corpus of $1,000. They appointed as trustee Chambers' sister, Mabel Baker, and named Chambers' three adult children as beneficiaries. Pet. App. A9-A10. The same day, CTR's president (Chambers' future wife), at Chambers' direction, executed

duplicate warranty deeds purporting to convey CTR's two tracts of land to Baker, as trustee, for a recited consideration of $1.4 million. *Id.* at A10. Once these steps had been taken, Chambers called Baker in Birmingham, Alabama, obtained her oral consent to name her as trustee, and informed her that he would fly to Birmingham the next day to have her sign some documents. *Ibid.* Chambers did not tell Baker about the sale at that time. *Ibid.* At 8:30 a.m. on Monday, October 17, the deeds, lacking the signature of the purported purchaser, were recorded at the direction of Chambers and Gray. *Id.* at A10-A11.

Later that morning, NASCO filed its complaint, and a hearing was held on its application for a TRO. *Id.* at A11. Gray participated fully in the TRO conference by telephone, but failed to say anything about his and Chambers' efforts to transfer CTR's property to the Trust. *Ibid.* The TRO issued at 1:34 p.m. *Ibid.* Several hours later, Chambers flew to Birmingham, met Baker at the airport, and obtained her signature on a $1.4 million note to CTR and her acceptance of the office of trustee. *Id.* at A12. Baker signed the documents without explanation from Chambers and without an understanding of their contents or the sale they purported to effect. *Ibid.* These actions by Chambers, occurring after the TRO issued and notice was given to Chambers' lawyer, were "an absolute violation of" the TRO. I J.A. 29-30.

In the days following entry of the TRO, Chambers' attorneys prepared and sent to Baker an agreement under which the Trust leased back to CTR the properties allegedly conveyed to the Trust in the warranty deeds. Pet. App. A13. On October 24, 1983, the district court held a hearing and granted a preliminary injunction that, among other things, ordered CTR and Chambers, as well as their "agents, employees, servants, attorneys, and all persons in active concert and participation with them," to refrain "from selling, transferring, conveying,

assigning or in any way encumbering any of the assets being purchased by plaintiff NASCO, Inc., pursuant to the terms of the Purchase Agreement dated August 9, 1983." Preliminary Injunction at 1-2 (Oct. 24, 1983). Also at the October 24 hearing, the court issued the first of many warnings to defendants, admonishing Gray that "the acts of Chambers and himself on October 16 and 17 . . . were reprehensible and unethical and that no acts of that nature should be repeated in the future." Pet. App. A13. The next day, October 25, Baker signed and returned the leaseback agreement. *Ibid.* The district court found that the execution of the leaseback agreement was "in absolute contempt of the TRO and the injunction." *Id.* at A24.

Chambers' abuses continued through every phase of the proceedings, during which the court repeatedly warned the defendants to cease their improper behavior. In November 1983, Chambers refused to allow NASCO to inspect certain corporate records, "in direct defiance of the standing preliminary injunction." *Id.* at A14. Chambers was held in contempt and fined $25,000 as a result. *See NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 583 F. Supp. 115, 121-22 (W.D. La. 1984). The contempt hearing conducted by the district court was, "by its inherent nature, a warning against any similar conduct in the future." Pet. App. A21; *see also* 583 F. Supp. at 122 ("Mr. Chambers has conducted himself in a sly and surreptitious manner on one prior occasion. . . . Thus, the fine must be sufficient to cleanse Mr. Chambers of his condescending attitude to ensure future cooperation in the *judicial* resolution of this matter.") (emphasis in original).

Chambers, CTR, and Baker next filed a series of "meritless motions and pleadings and delaying actions," including two motions for summary judgment on behalf of Chambers. *See* Pet. App. A14. The district court found that these and other filings were submitted "in

absolute bad faith." *Id.* at A15. Chambers also filed various "charges and counterclaims" against NASCO. The district court found that these charges were "deliberate untruths and fabrications by Chambers" and that Chambers' attorneys "knew, at the time that they were filed, that they were false." *Id.* at A16; *see also id.* at A40-A41, A51-A52.

Chambers also repeatedly interjected irrelevant issues into the pretrial proceedings and used the discovery process to explore them. CTR and Chambers took "absolutely needless" depositions of bank officials and NASCO board-members on such issues. *Id.* at A15. The district court ordered several uncompleted depositions cancelled on the ground of irrelevance. "This was," the district court noted, "another warning." *Id.* at A22. Chambers likewise sought frequent "continuances of trial dates, extensions of deadlines and deferments of scheduled discovery." *Id.* at A15. The district court found that these actions were a "deliberate misuse of the judicial process" aimed at "defeat[ing] NASCO's claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources." *Id.* at A16. The same aim was reflected in Chambers' designation of 100 witnesses before trial, even though he eventually called only two of them to testify. *Id.* at A17. Similarly, one month before the scheduled trial date of February 27, 1985, Chambers and CTR filed a motion to recuse the judge. *Id.* at A16. The district court denied the motion, which "was frivolous and had been filed for tactical purposes." *Id.* at A22. Defendants then unsuccessfully filed a petition for a writ of mandamus with the Fifth Circuit, thereby delaying the start of trial. *Id.* at A16.

Even after Chambers and CTR had lost decisively at trial, Chambers and his attorneys "continued to use every means, every subterfuge, every ruse possible to avoid performance of the Purchase Agreement." *Id.* at A17. Thus, before judgment had even been entered, Chambers

filed a petition with the FCC, without giving notice to NASCO, asking for permission to construct a new transmission tower and to move the station's transmission facilities to that site. *Ibid.* This attempt to alter the *status quo* directly violated the court's preliminary injunction. *Ibid.* Only informal intervention by the court and the threat of an additional sanction for contempt prompted Chambers to withdraw this petition. *Ibid.*

Once judgment was entered, Chambers "renewed his efforts to circumvent the merits judgment by fomenting opposition to the pending application for FCC approval of the transfer of the station license." *Id.* at A18. Chambers accomplished this by having two CTR officers lodge and prosecute formal oppositions to the transfer application, which was then pending before the FCC. *Ibid.* The district court found that these actions were "[i]n absolute violation of the injunction and of our Judgment of November 27, 1985." *Id.* at A24.

Chambers also attempted to exclude from the sale certain new operating equipment that had been acquired during the litigation to replace and augment equipment listed on Exhibit B to the Purchase Agreement. *Id.* at A20. When NASCO moved the court for judicial assistance in response to Chambers' efforts, Chambers' lawyer filed various papers "raising a multitude of irrelevant arguments; a request for a trial by jury on the pending motions, and a motion *in limine* to exclude any evidence pertaining to station assets not listed in Exhibit B." *Id.* at A19. At a hearing on NASCO's motion held on July 16, 1986, the court at the outset again warned defendants, who now were represented by a new attorney, Edwin McCabe, against employing any further abusive tactics. *Id.* at A22. Yet the hearing itself was "a case study in deception." *Id.* at A20. In an attempt to show that it did not own the disputed assets, CTR had prepared seventeen fraudulent equipment leases and its employees gave perjured testimony. *Id.* at A20, A57. In

addition, during a three-day recess in the hearing, the defendants, without informing the court or NASCO's counsel, removed from service all of the equipment at issue at the hearing. *Id.* at A19, A56. The court found that this was an attempt by Chambers to achieve extrajudicially the "very issues then before the court." *Id.* at A19.

Finally, even as NASCO's motion for judicial assistance was under consideration by the court, Chambers attempted to force NASCO into violating the Agreement by unilaterally insisting on proceeding to a closing of the sale without resolution of the dispute over the equipment. This necessitated yet another motion by NASCO seeking an emergency ruling on the motion for judicial assistance. The court granted the motion on July 31, 1986, later explaining that Chambers' effort was "nothing more and nothing less than an attempt to maneuver NASCO into position for termination of the sale." *Id.* at A20.

3. *Sanctions in the District Court.* After the Fifth Circuit's decision affirming the trial court on the merits and ordering consideration of sanctions on remand, NASCO moved the district court to set the amount of appellate sanctions and to impose sanctions for Chambers' conduct throughout the trial court proceedings. Pet. App. A2. An evidentiary hearing was held on April 11, 1988. *Id.* at A4. The district court, in an opinion issued on January 23, 1989, imposed sanctions on Chambers and others.

After extensively reviewing the facts set forth above, the court ruled that Chambers "knowingly and deliberately took advantage of [the TRO] notice to form and set into motion an illegal and fraudulent scheme . . . designed to place the operating properties of CTR beyond the reach and jurisdiction of this Court . . . and to deprive NASCO of a judicial determination of its rights to specific performance." *Id.* at A9-A10; *see also id.* at A51-A52. The court further concluded that Chambers was personally

aware of and responsible for the acts of his attorneys and that Chambers had not been led astray by legal advice. *Id.* at A24-A25. Chambers was, in the court's view, "the principal conspirator, the driving force, and the only person whose interests were served by the conspiracy and the sanctionable acts alleged." *Id.* at A42.

Assessing the expenses incurred by NASCO as a result of Chambers' efforts to deprive it of a fair adjudication, the court charged Chambers with $66,286.65 in appellate sanctions and $996,644.65 in attorneys' fees and related expenses. Finding that both 28 U.S.C. § 1927 and Rule 11 would be inadequate to redress the full range of improper litigation behavior engaged in by Chambers, the court invoked its inherent authority as a basis for the award. *Id.* at A39-A47.[2]

4. *The Court of Appeals Decision.* The Fifth Circuit affirmed the fee award. Pet. App. A59. After reviewing the extensive course of conduct upon which the district court had based its sanctions (*id.* at A60-A66), the court addressed Chambers' arguments that a district court generally lacks the inherent authority to award attorneys' fees for bad faith litigation practices, and that it specifically lacks that authority in diversity cases when state law does not permit such an award. Beginning with the proposition that "federal courts enjoy a zone of implied power incident to their judicial duty" (*id.* at A68), the court concluded that the award in this case was well within that zone.

Turning first to the "horizontal" limits on the courts' inherent power, the court of appeals held that "the rules of civil procedure and § 1927 do not displace a district court's power to shift fees for bad faith, wanton and vexatious conduct in the prosecution of the case." *Id.* at

[2] The court also reprimanded Baker and prohibited the three lawyers—Gray, McCabe, and Curry (the lawyer for the Trustee Baker)—from practicing in the Western District of Louisiana for periods of three years, five years, and six months, respectively.

A72. The court explained that "this much is implicit in *Alyeska* [*Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975)]." *Ibid.* The court added that the issue of displacement, of course, turns on Congress's intent in enacting statutes and allowing rules to come into force. *Id.* at A70-A71. The court found no such intent to displace the inherent authority at issue here, noting that various other congressional purposes are served by the statutes or rules invoked by the defendants.[3]

The court of appeals next examined the "vertical" limits placed on the district court's inherent powers under the doctrine of *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). *Id.* at A72-A78. The court first declined to read a footnote in *Alyeska* as settling the issue of whether *Erie* required the application of state law in these circumstances. Instead, relying on the legal framework articulated in *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945), and *Hanna v. Plumer*, 380 U.S. 460 (1965), the Fifth Circuit declared that, when "no federal rule controls and *Erie* analysis is therefore necessary, the outcome-determination test 'cannot be read without reference to the twin aims of the *Erie* rule—discouragement of forum shopping and avoidance of inequitable administration of the laws.'" Pet. App. A73 (quoting *Hanna*, 380 U.S. at 468). Those aims are not implicated, the court ruled, by a fee award, like the present one, that is based on "bad faith in the prosecution of a claim." *Id.* at A76. Unlike an award based on "bad faith in an underlying transaction," the award of fees incurred as a result of abuse

[3] Other possible goals cited by the court of appeals included: (1) to "alter[] the analysis of judicial reach in diversity cases" under the rule of *Hanna*, Pet. App. A70; (2) to further the "heuristic values of particularizing conduct that could without the rule be dealt with by a court's exercise of inherent power," *id.* at A71; and (3) to "sum experiences . . . despite the fact that singly the acts might not be so obstructive as to warrant ad hoc judicial responses," or conversely, to "reach for practices in their bud, before they come to flower." *Ibid.*

of the courts' processes "is not a matter of substantive remedy, but of vindicating judicial authority." *Id.* at A76-A77. The court concluded: "*Erie* does not compel a federal court to tolerate abuses in diversity cases that the court would not tolerate in other cases; nor does it limit the range of measures at the court's disposal to vindicate its authority." *Id.* at A77.

Having decided that the district court possessed the inherent authority to sanction Chambers, the Fifth Circuit next rejected Chambers' argument that there was insufficient evidence to support the district court's finding of bad faith. *Id.* at A78-A79. The court cited Chambers' central role in (1) "the creation of the trust, the sham transfer of the station's assets to it, and the almost immediate leaseback"; (2) the filing of the recusal motion; (3) the petitioning of the FCC for approval of construction of a new transmission tower, in violation of the district court's order; and (4) the presentation to the district court of false testimony and fraudulent equipment leases. *Ibid.* "Even making the dubious assumption that Chambers had nothing to do with other litigation tactics the attorneys undertook," the court reasoned, "this evidence sufficiently supports a finding of bad faith." *Ibid.* Lastly, the court held that the amount of the sanction imposed on Chambers was not an abuse of discretion since "NASCO's expenses throughout this litigation were without exception the product of Chambers' bad faith tactics." *Ibid.*[4]

[4] The Fifth Circuit upheld the district court's disbarment sanctions against the attorneys, except that it remanded for reconsideration of McCabe's disbarment in light of subsequent developments. Pet. App. A79-A83. On rehearing, the Fifth Circuit also remanded Carry's sanction for further consideration by the district court. *Id.* at A84-A85. None of the issues involving attorney sanctions are before this Court.

SUMMARY OF ARGUMENT

The district court awarded respondent its full attorneys' fees, concluding that petitioner had engaged in a "sordid scheme of deliberate misuse of the judicial process[] to defeat NASCO's claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources." Pet. App. A16. The court had the "inherent power" to make such an award and did not abuse its discretion in doing so here.

1. Federal courts possess the "unquestioned" inherent power to award attorneys' fees against parties who abuse their processes. *Hall v. Cole*, 412 U.S. 1, 5 (1973); *see Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980). Contrary to petitioner's submission, that power has not been eliminated by Congress or rendered obsolete through the 1980 amendment to 28 U.S.C. § 1927 or the 1983 amendment to Rule 11 of the Federal Rules of Civil Procedure. Neither provision evinces the slightest hint of an intent to dismantle this six-hundred-year-old core judicial power. Nor is either provision coextensive with the courts' inherent power: 28 U.S.C. § 1927 is expressly limited to certain actions by an "*attorney*" and thus does not reach traditionally sanctionable behavior by a *party*, such as perpetrating a fraud on the court or disobeying its orders; and Rule 11 likewise extends only to a particular set of activities relating to the "signing of pleadings, motions and other papers."

2. The federal courts' inherent power to impose fees applies in diversity as well as federal question cases. By its very nature, an inherent power cannot be a "rule of decision" under 28 U.S.C. § 1652. Its sole purpose is to protect the interests of a court *qua* court, thus implicating a "strong federal policy" concerning the "administ[ration] [of] justice to litigants who properly invoke [a federal court's] jurisdiction." *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 356 U.S. 525, 537-38 (1958). At the same time, the exercise of such power does not

impinge on the "twin aims of the *Erie* rule: discouragement of forum shopping and avoidance of the inequitable administration of the laws." *Hanna v. Plumer*, 380 U.S. 460, 468 (1965). On the contrary, a rule allowing fees for abuses of a court's processes is strictly neutral between litigants, favoring neither plaintiffs over defendants nor out-of-staters versus in-staters.

3. The district court's award of full attorneys' fees in this case must be affirmed because it does not rest "on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 110 S. Ct. 2447, 2461 (1990). As to the law, the court properly set the amount of the award in terms of its two goals—to protect the integrity of the judicial process and to make whole an innocent party. In particular, the court found that petitioner's entire defense was predicated on a fraud, and supported by tactics designed to delay and frustrate resolution of respondent's meritorious claim for specific performance. Those overarching findings, moreover, were amply supported by the record. Petitioner abused the judicial process from the moment he took advantage of the TRO notice required by Federal Rule 65(b) to manufacture a fraudulent defense, right through to his repeated post-judgment refusals to obey the court's orders.

ARGUMENT

The questions presented by this case are whether the federal district court had the power to award attorneys' fees against a party who abused its processes and, if so, whether the court here acted within its discretion when it awarded respondent all of its fees. Both questions must be answered in the affirmative. The authority to award attorneys' fees against a party who abuses the judicial process is a well-established part of a federal court's inherent power, extending to diversity as well as federal question cases; and the exercise of that power was entirely proper in this case.

I. FEDERAL COURTS POSSESS THE INHERENT POWER TO AWARD ATTORNEYS' FEES TO A PARTY WHOSE ADVERSARY HAS PURSUED OR CONDUCTED LITIGATION IN BAD FAITH.

Petitioner acknowledges, as he must, that the federal courts "possess the 'inherent power' to award attorneys' fees . . . upon a finding of bad faith, vexatious or oppressive conduct." Pet. Br. 10-11. This Court has described that power as "unquestioned," *Hall v. Cole*, 412 U.S. 1, 5 (1973); *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 259 (1975), and has reaffirmed its existence on numerous occasions. *See, e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980).[5] The Court has also explained that such a fee award "vindicates judicial authority without resort to the more drastic

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[5] *See also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 562 n.6 (1986); *Summit Valley Indus., Inc. v. Local 112, United Bhd. of Carpenters & Joiners*, 456 U.S. 717, 721 (1982); *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978); *In re Primus*, 436 U.S. 412, 431 n.23 (1978); *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. at 259-60; *F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974); *Newman v. Piggie Park Enters.*, 390 U.S. 400, 402 n.4 (1968); *Vaughan v. Atkinson*, 369 U.S. 527 (1962); *Rude v. Buchhalter*, 286 U.S. 451 (1932).

sanctions available for contempt of court and makes the prevailing party whole for expenses caused by his opponent's obstinacy." *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978).

The authority to award attorneys' fees for abuses of the judicial process is part of a larger array of inherent judicial powers that includes the power: to hold a party in contempt, *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821); to discipline attorneys, *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 354 (1897); *Roadway Express*, 447 U.S. at 766 & n.12; to conduct an independent investigation to determine whether a fraud has been perpetrated on the court, *Universal Oil Prods. Co. v. Root Ref. Co.*, 328 U.S. 575 (1946); to dismiss a case *sua sponte*, *Link v. Wabash R.R.*, 370 U.S. 626, 630 (1962); to remove disruptive litigants, *Illinois v. Allen*, 397 U.S. 337 (1970); and to enjoin the filing of repeated, frivolous *in forma pauperis* petitions, *In re McDonald*, 109 S. Ct. 993 (1989).

Collectively, these powers exist to protect a court "whose dignity has been offended and whose process has been obstructed." *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 428 (1923). They are, in short, judicial powers that "'are necessary to the exercise of all others,'" *Roadway Express*, 447 U.S. at 764 (quoting *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812)), and therefore are "governed not by rule or statute but by the control *necessarily* vested in courts to manage their own affairs." *Link*, 370 U.S. at 630 (emphasis added). *See also Young v. United States ex rel. Vuitton Et Fils S.A.*, 481 U.S. 787, 798 (1987) ("courts by their creation vested with power 'to impose silence, respect, and decorum in their presence, *and* submission to their lawful mandate'") (quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) at 227).[6]

[6] Petitioner appears to argue that the vitality of any particular inherent power depends on whether it can satisfy a test of "strict functional 'necessity.'" Pet. Br. 18. If, by that, petitioner means to suggest that, without the power in question, the judicial process would grind to a halt, he simply misunderstands this Court's precedents. *See, e.g., Link*, 370 U.S. at 629-30 ("the power to [dismiss a case *sua sponte*] is *necessary* in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts") (emphasis added). Indeed, it is difficult to see how any individual inherent power could be considered truly indispensable to the courts' ability to operate.

These settled principles notwithstanding, petitioner argues that "courts do not need th[is] inherent [fee-shifting] power," Pet. Br. 22, and therefore it should now be eliminated despite its six-hundred-year pedigree.[7] He further argues that, even if the power may be exercised in federal question cases, it still may not be employed in diversity cases "unless [it] is recognized by the applicable state law." *Id.* at 12. Petitioner is wrong on both counts.[8]

[7] The power to award fees for abuses of the courts' processes traces back to at least 1394. *See* Goodhart, *Costs*, 38 Yale L.J. 849, 854 (1923). As petitioner himself recognizes, "[t]his power was thought to be 'so far inherent in the equity court as to be *inseparable* from the exercise of its judicial authority.'" Pet. Br. 19 (emphasis added; citation omitted). *See Ladd v. Wright*, 72 Eng. Rep. 800 (1601) (awarding fees "*pur le unjust vexacon*"); *Dungey v. Angove*, 30 Eng. Rep. 644, 648-49 (1794) (equity court awarded fees for vexatious litigation "to do that, which appertains to justice, and that, which appertains to example, and to vindicate the honor and justice of the court"); *Ex Parte Simpson*, 33 Eng. Rep. 834, 835 (1809) (awarding fees for filing "irrelevant" affidavit).

[8] Petitioner is also incorrect in asserting that, because the inherent power to impose fees for process abuses originated with the Chancellor, "[t]hat equitable power was not available in this diversity case." Pet. Br. 21. As an initial matter, that position is simply irrelevant in this case, which involves "a purely equitable claim for specific performance." I J.A. 7. In any event, this Court has affirmed the existence of this power in law, equity, and admiralty cases interchangeably, *see* n.5, *supra*, and petitioner does not, nor could he, offer the slightest possible justification for why it would be any less necessary or appropriate in non-equity cases (to the

A. The Inherent Power To Impose Attorneys' Fees For Abuses Of A Court's Processes Has Not Been Taken Away By Congress Or Rendered Obsolete.

Recognizing that this Court expressly approved the federal courts' authority to impose fees for abuses of their processes as recently as 1980 in *Roadway Express*, petitioner argues that two subsequent events—the 1980 amendment to 28 U.S.C. § 1927 and the 1983 amendment to Rule 11 of the Federal Rules—now make it unnecessary for those courts to retain that power. Aside from the fact that the Court has reaffirmed the power since those enactments, *see* n.5, *supra*, petitioner's claim is senseless on its face: if these other provisions are coextensive with the scope of the authority exercised in this case, it is difficult to see what petitioner is arguing about (since both grounds were raised below and the judgment could thus be affirmed on those bases). As the district court indicated, however, these recent enactments address a more limited set of judicial concerns. *See* Pet. App. A39-A46. Neither reflects any suggestion that Congress intended to displace the courts' traditional inherent power, and neither provides a sufficient justification for doing so.

To begin with, as this Court has previously explained, the federal courts' authority to award fees for abuses of their processes continues to exist unless and until it is "forbidden by Congress." *Alyeska*, 421 U.S. at 259. The Court has also emphasized that, when dealing with judicial powers of such long-standing duration, it will insist on a clear expression of congressional intent before eliminating them. *See, e.g., Link*, 370 U.S. at 631-32 ("[i]t would require a much clearer expression of purpose than Rule 41(b) provides for us to assume that it was intended to abrogate [the inherent judicial power to

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extent that concept even has continuing relevance after the adoption of the Federal Rules of Civil Procedure).

dismiss a case with prejudice]"); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) (an inherent equitable power that originated before 1789—such as the one at issue here—continues to exist absent "a clear and valid legislative command") (citations omitted). Neither Rule 11 nor 28 U.S.C. § 1927 comes anywhere near to satisfying this demanding standard.

In the first place, neither provision, by language or history, provides the slightest hint that it was intended to eliminate the inherent power at issue here. On the contrary, the Advisory Committee's Note to the 1983 amendment to Rule 11 expressly states that it was intended to "*buil[d] upon and expan[d]* the equitable doctrine permitting the court to award . . . attorney's fees[] to a litigant whose opponent acts in bad faith in instituting or conducting litigation." 97 F.R.D. 198 (1983) (emphasis added) (citing *Roadway Express*).[9] Likewise, there is nothing about 28 U.S.C. § 1927—which applies only to an "attorney" who "multiplies the proceedings in any case unreasonably and vexatiously"—to suggest that Congress intended to displace the separate power to impose fees on a *party* who engages in abusive behavior. *See Roadway Express, supra* (upholding inherent power to award fees against an attorney even though power to award fees against a party already existed).[10]

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[9] In particular, the amendment intended to authorize the imposition of fees in certain circumstances even if the conduct in question does not rise to the level of subjective bad faith—for example, when the investigation that underlies a pleading fails to comport with the standard of objective reasonableness. *See* Advisory Committee Notes, 97 F.R.D. at 198-99 ("The standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation.").

[10] The legislative history of the 1980 amendment also confirms this view. The amendment was part of the Antitrust Procedural Improvements Act of 1980, Pub. L. No. 96-349, § 3, 1980 U.S. Code Cong. & Admin. News (94 Stat.) 1156, which addressed Congress's

It is equally clear that neither provision, nor both together, would provide an adequate substitute for the power at issue here. That power extends to the full range of litigation abuses, including perpetration of a fraud on the court, *Universal Oil Prods. Co. v. Root Ref. Co.*, 328 U.S. at 580; refusal to comply with a court's order, *Toledo Scale Co.*, 261 U.S. at 427-28; and, more generally, pursuit or defense of litigation "vexatiously" or for "oppressive reasons." *F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974) (citation omitted). Rule 11, by contrast, is specifically limited to particular requirements that must be satisfied with respect to "pleadings, motions, and other papers." It thus affects a narrower set of judicial concerns and relates primarily to attorneys, not parties.[11] Similarly, 28 U.S.C. § 1927 does not apply by its terms to any abuses when committed by a party. Although a lawyer may properly be sanctioned for some of those abuses, there will surely be times when counsel either does not know about them or cannot control them. Moreover, it may be entirely appropriate to sanction a party regardless of whether his lawyer is also sanctioned.

The power to impose attorneys' fees on a party who abuses the court's processes thus remains an important inherent power. Nothing else, including the particular provisions pointed to by petitioner, covers the same landscape. Without that power, therefore, federal courts would be significantly hampered in their ability to pro-

concerns with the increasing procedural cumbersomeness of antitrust litigation. Nothing in the legislative materials suggests that Congress was concerned about the scope of the courts' existing inherent powers, let alone that it intended to eliminate a significant dimension of them.

[11] Even if Rule 11's sweep is somewhat broader than its plain language would suggest, *see Business Guides, Inc. v. Chromatic Communications Enters., Inc.*, 892 F.2d 802 (9th Cir. 1989), *cert. granted*, 110 S. Ct. 3235 (1990), it still could not plausibly be stretched to cover the full range of litigation abuses encompassed by a court's inherent power.

tect themselves as well as innocent parties who have been forced to incur needless fees in seeking a fair adjudication because their opponents have misused the judicial process.

B. The Inherent Power To Award Attorneys' Fees For Abuses Of The Judicial Process Applies In Diversity Cases.

The federal courts' power to award fees for abuses of their processes applies in diversity as well as in federal question cases. By its very nature, an inherent power that protects the integrity and operations of a court *qua* court cannot depend for its existence on the jurisdictional basis of a case. Nothing in the *Erie* doctrine requires a contrary result: a rule allowing federal courts to impose fee awards for process abuses raises none of the concerns underlying *Erie*; such a rule, therefore, is not a "rule of decision" within the meaning of 28 U.S.C. § 1652.[12]

To confirm this conclusion simply requires a straightforward application of settled principles under the *Erie* doctrine. Thus, in *Byrd v. Blue Ridge Rural Elec. Coop.*, 356 U.S. 525 (1958), the Court held that a federal rule affecting the "essential characteristics" of the federal courts need not yield to a contrary state rule in diversity cases. *Id.* at 537. Such rules, the Court explained, nec-

[12] In an effort to manufacture an *Erie* claim here, petitioner incorrectly charges that the "real object of [the district court's] scorn was not abuse of the procedural process, but rather the pretrial conduct of Chambers in refusing to perform the Purchase Agreement and his role in the creation of the Public Records Doctrine defense." Pet. Br. 26 (footnote omitted). As both opinions below make crystally clear, however, "the [fee] award was based on Chambers's bad faith in the manner of conducting the litigation." Pet. App. A76. In particular, petitioner was sanctioned, first, for attempting to perpetrate a fraud on the court by making it appear as though "the operating properties of CTR [had been placed] beyond the reach and jurisdiction of this Court," Pet. App. A9; second, for filing groundless and dilatory claims and motions, and taking interminable discovery thereon; and third, for disobeying the district court's orders on several occasions.

essarily implicate a "strong federal policy," precisely because "[t]he federal system is an independent system for administering justice to litigants who properly invoke its jurisdiction." *Id.* at 537-38. As the Court in *Hanna v. Plumer*, 380 U.S. 460 (1965), likewise explained:

> [M]atters which relate to the administration of legal proceedings [involve] an area in which federal courts have traditionally exerted strong inherent power, completely aside from the powers Congress expressly conferred in the Rules. The purpose of the *Erie* doctrine, even as extended in *York* and *Ragan*, was never to bottle up federal courts with 'outcome-determinative' and 'integral-relations' stoppers—when there are 'affirmative countervailing [federal] considerations' . . . .

380 U.S. at 472-73 (quoting *Lumberman's Mutual Casualty Co. v. Wright*, 322 F.2d 759, 764 (5th Cir. 1963)). In accord with this view, the Court in *Link v. Wabash R.R., supra*, upheld the federal courts' inherent power to dismiss a diversity case without even discussing state law.

Moreover, as the Court's general analysis in *Hanna* explains, the question whether a state rule is a "rule of decision," and thus binding under 28 U.S.C. § 1652, cannot be determined "without reference to the twin aims of the Erie rule: discouragement of forum shopping and avoidance of the inequitable administration of the laws." 380 U.S. at 468. Neither of these concerns is raised by a rule authorizing federal courts to award fees in response to abuses of its processes. It cannot seriously be argued that a difference between state and federal practice in this regard would encourage "forum shopping." *Ibid.* As with Rules 11 and 37, which also authorize the imposition of sanctions for certain kinds of misconduct, fee awards for abuse of the judicial process are party-neutral: plaintiffs and defendants are equally advantaged or disadvantaged by them. Nor is there anything "inequitable" about a rule that treats

citizens and non-citizens alike, has no effect on the outcome of the underlying litigation, and does not even come into play unless a party seriously abuses the judicial process.[13]

Petitioner's assertion that this straightforward conclusion is barred by a footnote in *Alyeska* is untenable. In that note, the Court remarked that "state law denying the right to attorney's fees or giving a right thereto, *which reflects a substantial policy of the state*, should be followed [in diversity cases]." 421 U.S. at 259 n.31 (emphasis added). That statement does not cover the present type of fee award. It applies, by its terms, only to those fee-shifting rules that embody a substantive state policy, such as a prevailing-party rule designed to encourage the bringing of certain kinds of litigation. (In fact, the *Alyeska* statement is followed by a citation to a single case, *Sioux County v. National Surety Co.*, 276 U.S. 238 (1928), which involved precisely that kind of fee award.) But no state policy is impinged upon by a federal court's power to award fees in order to police abuses of *its* processes (let alone a policy that somehow outweighs the competing federal court interests). Thus, as the Fifth Circuit explained, the *Alyeska* footnote is simply not directed to the present case.[14]

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[13] The availability of sanctions under the Federal Rules of Civil Procedure also strongly supports the conclusion that the inherent power at issue here is "procedural" for *Erie* purposes. Pursuant to the Rules Enabling Act, 28 U.S.C. § 2072, a rule of civil procedure that "abridge[s], enlarge[s] or modif[ies] any substantive right" is impermissible. Yet it has never been questioned that awarding fees for violations of Rule 11 or 37 contravenes that prohibition. There is no basis for taking a different approach to an inherent power that serves similar purposes. *See Answering Serv., Inc. v. Egan*, 728 F.2d 1500, 1506 (D.C. Cir. 1984) (Scalia, J., concurring) ("[O]ne surely should not lightly denominate substantive for *Erie* purposes a matter closely allied to, if not inextricable from, what is specifically treated in the Federal Rules.").

[14] The Fifth Circuit recognized that other Circuits have interpreted the *Alyeska* footnote to support a contrary view, but con-

In sum, a rule, like the one at issue here, that is "directed at conserving judicial resources and preventing use of the courts as instruments of harassment," is "classically 'procedural.'" *Answering Serv., Inc. v. Egan*, 728 F.2d at 1506 (Scalia, J., concurring). Such a rule is solely the "business of the forum court," *ibid.*, and thus not a "rule of decision" requiring the application of a contrary state rule under *Erie*.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING RESPONDENT FULL ATTORNEYS' FEES.

The fee award in this case was properly tailored to the purposes that it is legitimately designed to serve. First, the district court concluded that full attorneys' fees were warranted because of the frequency and severity of petitioner's abuses and the resulting need to ensure that such abuses are not repeated (by others as well as by petitioner). Second, the court determined that fairness to respondent also required the award, finding that each of petitioner's individual abuses was part of an overall "scheme of deliberate misuse of the judicial process[] to defeat NASCO's claim." Pet. App. A16. Petitioner's various challenges to the size of the award are meritless.

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cluded that those decisions tended either to be reflexive in their application of *Alyeska* or to confuse "bad faith in the manner of conducting the litigation" with "bad faith in the commercial transaction giving rise to the suit." Pet. App. A76. This same confusion is also reflected in several of petitioner's citations (Pet. Br. 12-14). *See, e.g., Nepera Chemical, Inc. v. Sea-Land Serv.*, 794 F.2d 688, 696 (D.C. Cir. 1986) (addressing power to award fees incurred in prior litigation against third party as a result of defendant's tortious conduct). Moreover, other Circuits, without even mentioning *Alyeska*, have routinely upheld the inherent power to award attorneys' fees for bad faith litigation conduct in diversity cases. *See, e.g., Beaudry Motor Co. v. Abko Properties, Inc.*, 780 F.2d 751, 756 (9th Cir.), *cert. denied*, 479 U.S. 825 (1986). *See also Ray A. Scharer & Co. v. Plabell Rubber Prods., Inc.*, 858 F.2d 317 (6th Cir. 1988) (recognizing power in diversity case and remanding for further fact finding on question of bad faith).

A. The Award Was Based On Proper Legal Standards and Factual Findings.

The standard for reviewing a fee award based on bad faith litigation conduct is whether the district court abused its discretion. *See, e.g., Hall v. Cole*, 412 U.S. at 14; *cf. Cooter & Gell v. Hartmarx Corp.*, 110 S. Ct. 2447, 2461 (1990) ("appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination"). That standard is plainly a "deferential" one, requiring a reviewing court to determine only whether the "[district court] based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell*, 110 S. Ct. at 2461. Neither occurred in this case.

With respect to the legal dimension of the inquiry, the controlling question is whether the size of the award is reasonably tailored to serve its legitimate purposes. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Maher v. Gagne*, 448 U.S. 122 (1980). As noted at the outset, a fee award for conduct that abuses a court's processes serves two such purposes: it "vindicates judicial authority . . . and makes the prevailing party whole for expenses caused by his opponent's obstinacy." *Hutto v. Finney*, 437 U.S. at 689 n.14. The district court in this case recognized these governing principles and applied them correctly.

To begin with, the court explained that to vindicate judicial authority, a fee award "should be sufficiently severe to convince others that such tactics shall not be tolerated." Pet. App. A51. This concern prompted an award of full fees here because "[t]his case is as classic an example of vicious, deliberate, deceitful, fraudulent and sanctionable conduct as the Courts can produce." *Id.* at A50. Indeed, the district court expressly relied on

Universal Oil Prods. Co. v. Root Ref. Co., 328 U.S. 575, 580 (1946), where this Court stated that "if the court finds after a proper hearing that fraud has been practiced upon it, or that the very temple of justice has been defiled, the *entire cost* of the proceedings could justly be assessed against the guilty parties. Such is precisely a situation where 'for dominating reasons of justice' a court may assess counsel fees as part of the taxable costs." *Id.* at A43 (emphasis added by district court; citation omitted). The nature and frequency of the abuses at issue here, which included, but were in no way limited to, a fraud on the court make the present award seem modest in comparison.[15]

The district court next held that the compensatory function of its inherent fee-shifting authority also called for a grant of full fees. Having already found that petitioner's efforts were part of an overall scheme to misuse the judicial process, the court went on to conclude that "NASCO [was] forced to spend approximately a million dollars in this Court alone to win a suit in which defendants did not introduce one item of evidence to dispute its right of specific performance." *Id.* at A49. The court also observed that the Fifth Circuit had agreed with its view that petitioner's defense on the merits had been "completely frivolous," stating that "[a]s judges, we cannot check our common sense in the robing room and allow disingenuous arguments to characterize as serious an appeal as manipulative as is this one before us." *Id.* at A33. In short, as the Fifth Circuit later explained, "NASCO's expenses throughout this litigation were without exception the product of Chambers' bad faith tactics." Pet. App. A79.

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[15] In view of the egregiousness of petitioner's behavior, the court further considered (though it ultimately declined to award) "monetary sanctions to compensate the United States for waste of judicial resources caused by this suit." Pet. App. A52 n.12 (citing cases).

The findings of fact on which these legal conclusions rest are fully supported by the record, and certainly are not "clearly erroneous." Petitioner commenced his abuses the moment that the court's processes were invoked. When he received the notice required by Rule 65(b) for a TRO—which is designed to preserve the *status quo*—petitioner immediately went to work to perpetrate a fraud on the court by pretending to sell the assets at issue in the litigation. And his efforts continued unabated right up to the end of these proceedings, as he repeatedly disregarded the court's orders in an attempt to defeat the judgment for respondent. The record also fully supports the court's findings as to each of the individual abuses that made up this "sordid scheme"—from petitioner's initial fraud on the court, to his disobedience of the court's orders, to his relentless pursuit of frivolous legal and factual claims.[16]

B. Petitioner's Challenges To The Award Are Meritless.

Ignoring this Court's standards for reviewing the district court's decision, petitioner proposes instead that such fee awards be reviewed according to the following five criteria: (1) they must be awarded immediately after the abuse occurs; (2) they must be "properly tailored"; (3) the other party has a duty "to mitigate" the amount of fees he incurs; (4) the award cannot apply to "conduct that does not occur before the court; and (5) the sanction must be "personalized." Pet. Br. 30-36. All but the second of these criteria are either improper or irrelevant, however, and none provides any basis for changing the award in this case.[17]

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[16] The evidence relating to all of these findings is set out in detail in the court's opinion and summarized at pp. 4-9, *supra*.

[17] Petitioner's constitutional musings regarding the Eighth and Fourteenth Amendments are similarly meritless. Petitioner received a full evidentiary hearing on the fee award. Due process requires no more. *See* Pet. App. A46-A47, and authorities cited therein. Since the award was properly tailored to serve its legitimate pur-

In the first place, there is nothing wrong with imposing a fee award at the close of the proceedings. Indeed, this Court has already made clear that it is entirely appropriate to sanction a party "even 'years after the entry of a judgment on the merits.'" *Cooter & Gell*, 110 S. Ct. at 2456 (citation omitted). The court should not reward a party who seeks delay, especially in a specific performance case, by interrupting the merits proceedings to conduct sanctions hearings. Moreover, awaiting the conclusion of the proceedings makes particular sense with respect to the kind of fee award at issue here, because at that time the trial court is best able to assess what portion of a party's fees was spent responding to legitimate litigation tactics and what portion was caused by having to respond to his opponent's abuses. In fact, the district court in this case did not even know the full magnitude of some of petitioner's abuses until his voluntary stipulation on the eve of trial, and other abuses did not occur until after judgment. *See* Pet. App. A17-A21, A34.[18]

Petitioner's proposed mitigation principle is likewise out of place here. It defies common sense to think that a party will needlessly run up legal fees in the hope that he will get them back later: at best he can break even. Moreover, the principle has no application in this case. Petitioner's sole complaint is that respondent did not seek summary judgment. But petitioner himself made summary judgment unavailable by falsely claiming that there

poses, moreover, it can hardly have been "grossly disproportionate," Pet. Br. 34, under the Eighth Amendment—which, in any event, does not apply here. *See Browning Ferris Indus., Inc. v. Kelco Disposal, Inc.*, 109 S. Ct. 2909 (1989).

[18] In any event, petitioner is in no position to assert that he was somehow prejudiced by having the imposition of fees await the close of proceedings; he received "[e]arly notice" of his abusive behavior from the district court, Pet. Br. 31 (citation omitted), and was actually held in contempt as a result of it during the preliminary phase of discovery, 583 F. Supp. 115.

were factual disputes about the validity of the Purchase Agreement and the *bona fides* of his simulated sale to the Trust. Petitioner is thus in no better position to complain of a failure to mitigate than is a child who kills his parents and pleads for mercy on the ground that he is an orphan.[19]

By the same token, petitioner's argument that a fee award can be based only on conduct occurring directly before the court has already been squarely rejected. As long as a party receives an appropriate hearing, which petitioner did, he may be sanctioned for out-of-court abuses of the court's processes, such as, for example, disobeying court orders or inappropriate conduct at depositions. *See, e.g., Young v. United States ex rel. Vuitton Et Fils S.A.*, 481 U.S. at 798-800; *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. at 426-28. Similarly, petitioner cannot overturn the award on the ground he was an unwitting victim of his lawyers' malfeasance. Given the nature of the abuses—such as concocting a plan to deceive the district court into believing that the subject matter of the lawsuit had been removed from the court's jurisdiction, violating court orders, and fabricating testimony and documents—and the fact that they continued even after petitioner changed counsel, the district court could hardly have found anything other than that petitioner was "the principal conspirator, the driving force" behind the whole abusive scheme. Pet. App. A42.

Petitioner's only correct standard, then, is that a fee award should be "properly tailored" to serve its legitimate purposes. Petitioner goes awry, however, in apply-

[19] Contrary to petitioner's suggestion, moreover, there is no requirement that counsel maintain detailed time records to support a fee award for process abuses. In contrast to a case where a party seeks statutorily authorized fees for prevailing on the merits, in the present circumstances neither the client nor his attorney can anticipate in advance that he will be involved in one of the rare cases that will justify fees.

ing that standard. In addition to the fact that he fails to show that any particular portion of the fee award was unconnected to his abuses,[20] petitioner never comes to grips with the fundamental character of his actions: as both courts below recognized, petitioner's abuses were so pervasive that it was proper, indeed necessary, to find that his entire course of conduct constituted a systematic use of the litigation process for "oppressive reasons." *F.D. Rich Co.*, 417 U.S. at 129; *see Roadway Express*, 447 U.S. at 766.[21] Simply put, petitioner's whole litigation effort rested on "a plan of obstruction, delay, harassment, and expense sufficient to reduce NASCO to a condition of exhausted compliance." Pet. App. A36. In these circumstances, there was no abuse of discretion in awarding fees to compensate NASCO for all of its litigation expenses.

In sum, the district court imposed attorneys' fees in the proper amount and on the proper person.[22]

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[20] Even viewing the award as if it were based on a series of isolated events, there would be no justification for petitioner's unsupported claim that approximately $186,000 of respondent's fees "cannot by any conceivable notion be considered part of Chambers' bad faith *litigation* conduct." Pet. Br. 37. The $106,000 of those fees relating to the "delay damages" phase of the litigation were appropriate, even though the amount of those damages was settled by the parties, because the delay itself resulted from petitioner's improper tactics which in turn forced respondent to litigate the issue needlessly. And the $80,000 in closing fees were also properly awarded since petitioner's misuse of the court's processes had placed a serious cloud on respondent's title, thereby multiplying the costs of a routine closing many times over. *See* Findings of Fact and Conclusions of Law Proposed by NASCO at 69-71.

[21] To support the opposite view, petitioner goes so far as to quote only the non-italicized part of the following sentence from the district court's opinion: "*Although* there was some legal basis for some of [petitioner's] defenses, *when we view them in context with the entire record, it is quite obvious that defendants' true purpose was delay, harassment and killing expense.*" Pet. App. A33 (emphasis supplied), quoted at Pet. Br. 37.

[22] If, contrary to our submission, the district court either lacked the inherent power to award fees or abused its discretion in doing so, the case should be remanded for further proceedings consistent with the Court's opinion. Petitioner's assertion that it would somehow be improper "to sanction him at this late date (on remand for example) for [his] procedural abuses," Pet. Br. 42, is nonsense.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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